Supreme Court, U.S.
FILED
OCT 17 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-714

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

BARBARA J. BRANSON,

Petitioner,

vs.

COUNTY OF LOS ANGELES, et al.,

Respondents.

RESPONSE TO PETITION FOR WRIT OF MANDAMUS OR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

DEWITT W. CLINTON
County Counsel

DONOVAN M. MAIN
Assistant County Counsel

ALBERT D. KELLY
Principal Deputy County Counsel

648 Hall of Administration
500 West Temple Street
Los Angeles, California 90012
(213) 974-1950

Attorneys for Respondents
COUNTY OF LOS ANGELES, et al.

BEST AVAILABLE COPY

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

1. Whether the Court of Appeals' decision to deny the petition for rehearing by the petitioner was in conflict with the decision of another federal court of appeals on the same matter; or has the court decided a federal question in a way in conflict with a state court of last resort?

2. Whether the Court of Appeals in its decision to deny the petition for rehearing by petitioner has departed from the accepted and usual cause of judicial proceedings, or sanctioned such a departure by a lower court, that would require review by the Supreme Court?

3. Whether California Supreme Court has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals?

4. Whether the federal court of appeals has decided an important question of federal law which has not been, but should be, settled by the Supreme Court, or has decided a federal question in a way in conflict with applicable decisions of the Supreme Court?

5. Whether the several opportunities provided petitioner to be heard constituted due process under the Fourteenth Amendment?

LIST OF PARTIES

Petitioner:

Barbara J. Branson

Respondents:

UNITED STATES COURT OF APPEALS, NINTH CIR.

JOHN F. KILKENNY, Circuit Judge

JOSEPH T. SNEED, Circuit Judge

DIARMUID F. O'SCANNLAIN, Circuit Judge

Real Parties in Interest

(or Respondents under Certiorari):

COUNTY OF LOS ANGELES

MICHAEL D. ANTONOVICH, Supervisor

DEANE DANA, Supervisor

KENNETH F. HAHN, Supervisor

PETER F. SCHABARUM, Supervisor

EDMUND D. EDELMAN, Supervisor

ROBERT H. PHILIBOSIAN, District Attorney

JAMES A. BASCUE, Chief Deptuy D.A.

BILLY D. WEBB, Director Branch & Area Operations, D.A.

ANN BURNETT, Employee Relations, D.A.

ERNEST E. GOODMAN, Civil Service Comm'n.

N. KEITH ABBOTT, Civil Service Comm'n.

GEORGE S. NOJIMA, Civil Service Comm'n.

TOM SALATA, Civil Service Comm'n.

CECILIA M. SANDOVAL, Civil Service Comm'n.

JOHN C. BOLLENS, Civil Service Comm'n.

ARNOLD L. FABER, Hearing Office CSC

JOHN H. LARSON, Former County Counsel

DE WITT W. CLINTON, County Counsel

JOE BEN HUDGENS, Deputy County Counsel

MARK H. BLOODGOOD, Auditor-Controller

NORMAN L. EPSTEIN, Superior Court Judge

TABLE OF CONTENTS

Headings	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	iii
TABLE OF AUTHORITIES	vi
JURISDICTION	vi
STATUTES INVOLVED	vi
STATEMENT OF THE CASE	1
ARGUMENT	6
CONCLUSION	17

* * *

APPENDIX A	STATUTES INVOLVED	A-1

TABLE OF AUTHORITIES

Fourteenth Amendment (Due Process Clause)

Supreme Court Rule 17

JURISDICTION

The memorandum opinion of the Court of Appeals was filed April 29, 1987 and is final by its terms. A timely petition for rehearing was denied June 23, 1987. The jurisdiction of this Court is sought under Title 28 U.S.C. 1651(a) for the extraordinary writ of mandamus, or in the alternative under Title 28 U.S.C. 1254(1) for the writ of certiorari.

STATUTES INVOLVED

Fourteenth Amendment (Due Process Clause) Supreme Court Rule 17

Text of Amendment and Rule are quoted in Appendix.

No. _____

IN THE
SUPREME COURT
OF THE UNITED STATES

October Term, 1987

BARBARA J. BRANSON,

Petitioner,

vs.

COUNTY OF LOS ANGELES,
et al.,

Respondents.

RESPONSE TO PETITION FOR WRIT OF MANDAMUS OR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

I.

STATEMENT OF THE CASE

On April 8, 1985 the petitioner Barbara J. Branson, appearing in pro se, commenced suit in United States District Court, Central District of California. Appellant's rambling and disjointed 72 page complaint alleged violations of: 42 U.S.C. §§ 1981, 1983, 1985, 1986, and 1988; the Consumer Credit Protection Act (15 U.S.C. § 1673); the First, Fourth, Fifth, Ninth, Thirteenth, and Fourteenth Amendments to the United States Constitution; and breach of contract, theft of personal property, and wrongful discharge among other things. It requested $64,000,000.00 in damages. The complaint arises from petitioner's discharge from the County of Los Angeles and the subsequent proceedings before the Civil Service Commission of the County of Los Angeles and in the courts of the State

of California. Petitioner (Mrs. Branson) was discharged when she refused to return to work after respondent County of Los Angeles honored federal and California tax levies on her wages.

The individual defendants included the members of the Board of Supervisors of Los Angeles County, the former District Attorney of Los Angeles County and some of his employees, former and present members of the Civil Service Commission of Los Angeles County, a civil service hearing officer, the former and present Los Angeles County Counsel, a Principal Deputy County Counsel, the Auditor/Controller of Los Angeles County, and a Superior Court Judge of the State of California. The defendant United Pacific Insurance Company wrote a public officials bond on some public officals of the County of Los Angeles.

Defendants United Pacific Insurance Company (the "Insurance

Company"), Judge Epstein, and the remaining defendants (the "County defendants") made motions to dismiss the complaint which were ordered to be heard and were heard August 6, 1985 before United States Magistrate Geffen. The Insurance Company joined in the motion by the County defendants. The motion was to dismiss or, in the alternative, for a more definite statement. It was based on Rule 8(a)(2) of the Federal Rules of Civil Procedure (FRCP), the non-specific pleading of fraud allegations in violation of FRCP 9(b), the non-specific pleading of civil rights violation allegations, failure to state a claim for relief in violation of FRCP 12(b)(6), or for a more definite statement under FRCP 12(e). Judge Epstein's motion to dismiss was based on judicial immunity and failure to state a claim. The Magistrate issued a recommended ruling dismissing the complaint without leave to amend as to the Insurance Company,

Judge Epstein, and the individual County defendants in their non-official capacities. The recommended ruling stated that Mrs. Branson should have leave to amend as to the remaining portions of the complaint, and that all proceedings should be suspended for 60 days to allow the County defendants to file a motion for summary judgment.

Mrs. Branson objected by filing a motion to vacate the reference to the Magistrate, which was heard before United States Judge William Rea on September 16, 1985. Judge Rea vacated the reference to the Magistrate and dismissed the complaint with 60 days leave to amend and directions to Mrs. Branson to plead in a clear and concise manner. Reporter's Transcript (RT) 9/16/85, p. 53, line 14 through p. 54, line 13.

Mrs. Branson's response was to file an amended complaint which increased

in length from 72 to 87 pages.

The Insurance Company, Judge Epstein, and the County defendants filed motions to dismiss on substantially the same grounds as the previous grounds. The motions were heard March 10, 1986 before Judge Rea. The first amended complaint was dismissed without leave to amend and the case was dismissed with prejudice by order entered March 27, 1986.

Mrs. Branson filed her notice of appeal April 7, 1986.

Mrs. Branson served her brief by June 23, 1986.

1. Subject Matter Jurisdiction of the District Court.

The District Court had subject matter jurisdiction of the claims alleged in the first amended complaint.

2. Jurisdiction of the United States Court of Appeal.

The United States Court of Appeal

had jurisdiction to hear the appeal.

3. Appealability of the Order.

The order of dismissal with prejudice was a final order dispositive of all claims of petitioner in the action filed in the district court.

4. Timeliness of Appeal.

Notice of appeal was filed by petitioner in a timely manner.

On June 23, 1986 the United States Court of Appeals denied Mrs. Branson's petition for rehearing.

ARGUMENT

1. The Court of Appeals decision to deny the petition for rehearing by the petitioner was not in conflict with a decision of another federal court of appeals on the same matter; nor did the Court of Appeals decide a federal question in a way in conflict with a state court of last resort.

Supreme Court Rule 17.1(a)

indicates at the outset that since review on Writ of Certiorari is a matter of a judicial discretion rather than of right, certiorari will be granted "only when there are special and important reasons therefor." 1/ The Court will consider granting certiorari when a decision by the federal court of appeals is in conflict with another federal court of appeals on the same matter; or has decided a federal question in a manner in

---

1/ "1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision."

conflict with a state court of last resort. 2/

In the instant case the federal court of appeals' decision denying the petitioner relief did not render the holding in conflict with the decision of another federal court of appeals involving the same matter; nor did the federal court of appeals decide a federal question that was in conflict with the Supreme Court of California. Hence, no such conflict of law exists in the instant case.

2. The Court of Appeals decision to deny the petition for rehearing by the petitioner did not depart from the accepted and usual course of judicial proceedings nor did the Court of Appeals sanction such a departure by a lower court, that would call for the Supreme Court's power of supervision.

2/ See footnote 1.

Under Supreme Court Rule 17.1(a) the Court will also consider granting certiorari when a federal court of appeals has departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, that would call for the Supreme Court's power of supervision. 3/

The Court of Appeals decision to deny the petition for rehearing as submitted by the petitioner demonstrated no departure from accepted and usual judicial proceedings, nor did the court sanction such a departure by a lower court. Therefore, the above mentioned consideration in granting certiorari under Rule 17.1(a) is not present in the case at hand.

3/ See footnote 1.

3. The California Supreme Court has not decided a federal question in a manner in conflict with the decision of another state court of last resort or of a federal court of appeals.

The Supreme Court will also consider granting certiorari under Rule 17.1(b) "When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals."

In the case at issue the California Supreme Court has not decided a federal question in a manner that is in conflict with the decision of another state court of last resort or of a federal court of appeals. Furthermore, the California Supreme Court denied Mrs. Branson's petition for hearing that was before it. Thus no federal question of law was decided by the California Supreme Court.

4. The Court of Appeals has not decided an important question of federal law which should be resolved by the Supreme Court, nor has the Court of Appeals decided a federal question in conflict with applicable decisions of the Supreme Court.

Under Supreme Court Rule 17.1(c) the Court will consider granting certiorari when the following occurs:

> "When a . . . federal court of appeals has decided an important question of federal law which has not been, but should be settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court."

In the case at hand the court of appeals has not decided an important question of federal law which should have been settled by the Supreme Court; nor has the court of appeals decided a federal question in a manner which conflicts with

applicable decisions of the Supreme Court. In fact, in the instant case the court of appeals denied Mrs. Branson's petition for rehearing. Therefore, no important question of federal law was decided by the court of appeals.

5. The petitioner was afforded several opportunities to be heard, hence petitioner was not denied due process.

The relevant section of the fourteenth amendment provides ..."nor shall any state deprive any person of life, liberty, or property without due process of law."

Petitioner, Barbara J. Branson was given several opportunities to be heard. Specifically, petitioner hasn't paid her taxes. She worked for respondent, County of Los Angeles (County) for approximately 16 years. A dispute regarding payment of taxes developed between petitioner and the Franchise Tax Board, which culminated with the garnishment of her wages. The County

complied with the garnishment order and petitioner received paychecks reduced by the appropriate amount. Petitioner simply stopped coming to work following termination of her authorized leave. On November 19, 1983, the County notified petitioner of her imminent termination should she not return.

The following hearing opportunities were afforded the petitioner:

(1) On November 29, 1983, a meeting was held between representatives the District Attorney's Office and, at petitioner's request, her husband and two friends, acting as her representatives. The purpose of this meeting was to grant petitioner an opportunity to respond to the November 19, 1983 letter.

(2) On December 30, 1983, the County sent a letter to appellant notifying her of her discharge from permanent employment as of that date because of excessive and unauthorized absenteeism;

pointing out that her dispute was with the Franchise Tax Board; and advising her of her right to request a hearing before the Civil Service Commission.

(3) Petitioner requested a hearing before the Civil Service Commission and the hearing was denied.

(4) On April 2, 1984, petitioner filed a petition for peremptory writ of administrative mandamus, seeking a Civil Service hearing regarding the cause of her dismissal. At the May 18, 1984, hearing on this petition, the Superior Court [Judge Epstein] found that since appellant had admitted she was absent to protest her wage garnishment, the only hearing required was one limited to the appropriateness of the 'degree of discipline.' The Court [Judge Epstein] signed what it labled an interlocutory judgment on June 11, 1984, and issued the related peremptory writ on August 15, 1984.

(5) On June 28, 1984, Mrs. Branson petitioned the United States Court of Appeals for a writ of prohibition against the writ issued by the superior court, protesting the denial of her full evidentiary hearing.

(6) Upon the court of appeals' denial of Mrs. Branson's petition, she unsuccessfully sought a hearing before the California Supreme Court.

(7) Petitioner's Civil Service Commission hearing on the appropriateness of her termination was held on October 9, 1984. The Commission upheld her discharge in all respects.

(8) On March 22, 1985, petitioner filed a motion to vacate the June 11, 1984 writ ordering the limited hearing. A hearing on this motion was held on May 8, 1985. The Court [Judge Epstein] questioned the County about (1) the existence of evidence that petitioner at some time had said

she would return to work if the County would cease garnishing her wages; and (2) about the legality of the amount being garnished from petitioner's wages. The Court [Judge Epstein] believed if the County could satisfactarily answer its queries in these areas, it would not vacate the June 11 writ.

(9) Petitioner appealed from the May 8, 1985 order. However the United States court of Appeals denied Mrs. Branson's petition for rehearing.

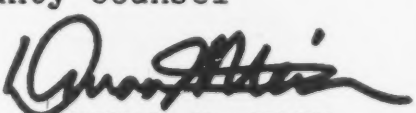
The above mentioned chronology firmly establishes that the petitioner was afforded several substantial opportunities to have her case heard and therefore was not denied due process. While the petitioner may not be satisfied with the result in the instant case she was provided with a thorough adjudication of her claim.

CONCLUSION

The considerations governing a review on writ of certiorari as setforth in Supreme Court Rule 17 are not present in Mrs. Branson's petition. Furthermore the above mentioned discussion establishes that petitioner was afforded an abundance of opportunities to have her claim heard, therefore she was not denied due process. Petitioner's discharge was based solely on her refusal to come to work following the termination of her authorized leave. Petitioner would not return to work because she refused to pay her taxes.

Therefore, respondents request that Mrs. Branson's petition for certiorari be denied by this Court.

DE WITT W. CLINTON
County Counsel

By 
DONOVAN M. MAIN
Assistant County
Counsel

Attorneys for Respondents

APPENDIX

STATUES INVOLVED

FOURTEENTH AMENDMENT (Due Process Clause)

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SUPREME COURT RULE 17

Rule 17. Considerations Governing Review On Certiorari

1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court or last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

.2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of[1] the United States Court of Appeals for the Federal Circuit, the United States Court of Military Appeals, and of any other court whose judgments are reviewable by law on writ of certiorari.